

## **CIVIL SERVICE COMMISSION MINUTES**

**January 16, 2002**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt  
Gordon Austin  
Roy Dixon  
Barry I. Newman  
Sigrid Pate

Absent was: None.

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES  
January 16, 2002

1:00 p.m.      SPECIAL MEETING - Closed Session.

1:30 p.m.      CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION: Room 358, 1600 Pacific Highway,  
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>1,4,8,9,11,12,15</u>	<u>12,21</u>	<u>11</u>	<u>7,8</u>
<u>17,18</u>			

COMMENTS Motion by Newman to approve all items not held for discussion; seconded by Dixon. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

A. Commissioner Austin: **M. Desiree N. Nelson**, former Administrative Trainee, appealing the Final Charges and Order of Termination from the Department of Human Resources.

B. Commissioner Pate: Everett Bobbitt, Esq. on behalf of **Amy Henson**, Deputy Sheriff-Detentions, appealing an Order of Removal of Corporal Premium Pay, Pay Step Reduction and Charges from the Sheriff's Department.

**REGULAR AGENDA**  
**County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

**ELECTIONS**

1. Election of President and Vice-President of the Commission for 2002.

**Motion by Brummitt to nominate Austin as President and Newman as Vice-President; seconded by Dixon. Carried.**

## MINUTES

2. Approval of the Minutes of the regular meeting of December 5, 2001.

**Approved.**

## CONFIRMATION OF ASSIGNMENTS

3. Commissioner Newman: Barrett J. Foerster, Esq., on behalf of **John Jimenez**, former Deputy Public Defender V, appealing an Order of Removal and Charges from the Department of the Public Defender.

**Confirmed.**

4. Commissioner Austin: Stewart Kocivar, S.E.I.U. Local 535, on behalf of **Joseph Diaz**, former Protective Services Worker II, appealing an Order of Removal and Charges from the Health and Human Services Agency (HHSA).

Anthony Albers, Sr. Deputy County Counsel, on behalf of the Agency, stated that Mr. Diaz' appeal was not timely filed. He explained that the reason of "holiday conflicts" does not show good cause regarding the untimeliness of the appeal.

Stewart Kocivar, S.E.I.U. Local 535, on behalf of Appellant, explained that he was on vacation from 12/21/01 through 1/1/02. Although not the only person in the Union office, he was assigned to Mr. Diaz' matter and the Removal was on his desk upon his return from vacation on January 2, 2002. He further explained that he made several attempts to contact Mr. Diaz on January 2nd, but was unable to communicate with him. The appeal was faxed to the Commission office on January 3<sup>rd</sup>.

Executive Officer, Larry Cook, and Sr. Deputy County Counsel, Ralph Shadwell reminded the Commission of the Velez decision, wherein the appellant showed good cause for an untimely filing of an appeal. The Court in that case ordered the Commission to grant a hearing. Both Mr. Cook and Mr. Shadwell stated that this matter closely parallels the Velez case, and that a Court would probably find in favor of Appellant.

Commissioner Newman commented that the Union should have protected its client's rights by communicating with the Commission office on January 2, 2002 to show good faith regarding the untimely filing of the appeal.

**Motion by Pate to grant a hearing; seconded by Dixon.**

**Ayes:** Pate, Dixon  
**Noes:** Austin, Brummitt, Newman  
**Abstentions:** None

**Motion failed for lack of majority vote; therefore the request for hearing was denied.**

5. Commissioner Dixon: **John H. Neal**, Detentions Nurse Practitioner, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

**Confirmed.**

6. Commissioner Brummitt: Everett Bobbitt, Esq., on behalf of **William Haggerty**, Deputy Sheriff-Detentions, appealing an Order of Suspension and Charges from the Sheriff's Department.

**Confirmed.**

#### **WITHDRAWALS**

7. Commissioner Newman: **Richard Eustace**, Building Maintenance Engineer, appealing an Order of Suspension and Charges from the Department of General Services.

**Withdrawn.**

#### **DISCIPLINES**

##### **Findings**

8. Commissioner Austin: **M. Desiree N. Nelson**, former Administrative Trainee, appealing the Final Charges and Order of Termination from the Department of Human Resources.

Commissioner Austin, the hearing officer in this matter, addressed the Commission. He explained that after the Opening Statements by the Department and the Appellant, Appellant admitted the charges and was only disputing the level of discipline, which was termination. After some discussion, Appellant requested withdrawal of her appeal with the approval of the Department. The hearing did not continue. The Appeal was withdrawn and there was no further action taken.

**Motion by Austin to approve Findings and Recommendations; seconded by Dixon. Carried.**

9. Commissioner Pate: Everett Bobbitt, Esq., on behalf of **Amy Henson**, Deputy Sheriff-Detentions, appealing an Order of Removal of Corporal Premium Pay, Pay Step Reduction and Charges from the Sheriff's Department.

#### **FINDINGS AND RECOMMENDATIONS:**

Employee is charged with Causes I, II, III and IV - Conduct unbecoming an officer of the County of San Diego (unwanted touching of another Deputy); Cause V - Acts incompatible with and/or inimical to the public service. Employee has been a Deputy Sheriff-Detentions for approximately 10 years. During the last 2 years she has been assigned to the Las Colinas Detention Facility. The fact that Employee is gay is common knowledge at the Facility. This disciplinary proceeding arose from an investigation that commenced in response to written reports by two deputies (hereafter referred to as "Deputies X and Y"). These two deputies were ordered to prepare reports after a sergeant indirectly learned about the alleged conduct by Employee. In the reports the deputies alleged repeated incidents of inappropriate physical contact by Employee. The testimony of Deputies X and Y was generally consistent with the charges contained in the Order. Both deputies indicated that they had no personal relationship with Employee and that they interpreted her contact as sexual or romantically motivated. However, there were inconsistencies between their testimony at the hearing and their interviews by OIA investigators several months prior to the hearing.

At the Commission hearing Deputy Y testified that during each incident of contact by Employee, she would make short verbal protests regarding the contact. She also testified that she believed that the contact would have been discontinued if she had more extensively discussed with Employee her discomfort in being touched. Deputy X, on the other hand, testified that she was so shocked by each incident that she did not make any verbal protestations to Employee. The Department presented the testimony of Captain Runyan regarding the investigation and recommendation. He testified the original disciplinary recommendation was a termination, however he recommended that the discipline be reduced to a 5-day suspension and loss of premium pay. He further testified that he took into consideration Employee's overall performance and disciplinary record, and an alleged prior incident in which Employee was verbally admonished for patting a Department sergeant on the buttocks. It appeared that Captain Runyan's testimony was credible and fair.

Employee argued that she was receiving disparate treatment because of her homosexuality and presented testimony of several Department deputies. They all testified as to Employee's integrity and high level of performance and that Employee was a "touchy" person by nature. They did not perceive the touching to be sexual in nature. The type of contact that constitutes sexual harassment or even simply inappropriate touching, is often subjective and contextual. Employee had some level of training concerning the inappropriateness of such conduct. If that was insufficient to capture her attention, she should have taken note when a Department sergeant verbally admonished her. Her attempt to defend such conduct by arguing that she is being singled-out because of her homosexuality, is a double-edged sword. She should have been aware that some co-workers would interpret her touching as sexually motivated. Whether sexually motivated or not, the touching was inappropriate. Employee is not guilty of Cause I. Employee is Guilty of Causes II through V. It is therefore recommended that the Order of Removal of Corporal Premium, Pay Step Reduction and Charges be modified to include only removal of corporal premium pay; that Employee will be awarded back pay, benefits, and interest for the loss of pay equal to five (5) work days (42.5 hours); that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Pate to approve Findings and Recommendations; seconded by Newman. Carried. Dixon - No. (Stating that he felt discipline recommendation was not harsh enough.)**

## **DISCRIMINATION**

### **Complaints**

10. **Donald Klatt**, former Pharmacist, alleging retaliation discrimination by the HHSA.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Pate assigned.**

11. **Jonathan Galloway**, Analyst I, alleging retaliation discrimination by the HHSA.

RECOMMENDATION: Deny Request. Mr. Galloway's allegations of non-job related factors, as stated, are unclear as to how they relate to discrimination.

Mr. Galloway addressed the Commission. He expressed that the burden of proof was difficult. However, he feels that his supervisor was disgruntled about his promotional appointment to a unit over his supervisor's objections. He believes the supervisor sought retaliation for non-job related reasons. He noted several anomalies to support his position.

Anthony Albers, Sr. Deputy County Counsel asked whether the Agency had had an opportunity to respond to Mr. Galloway's accusations. Larry Cook, Executive Officer, explained that normally a department is not involved in the initial proceedings regarding an alleged discrimination. It is the responsibility of complainant to inform the Commission of the type of discrimination, and the date(s) of alleged discrimination in order to satisfy a 60-day filing deadline. If these two criteria are met, an investigation is normally granted, an investigating officer is assigned, and the matter is then forwarded to OIA.

Commissioner Austin addressed Mr. Galloway and the Commission, stating that the accusations warranted an investigation.

**Motion by Dixon to grant an investigation; seconded by Pate. Carried. Commissioner Newman assigned.**

12. Barrett J. Foerster, Esq., on behalf of **Alfred LeSane**, Deputy Public Defender II, demanding the Commission proceed with its investigation.

RECOMMENDATION: Deny Request.

Mr. Foerster explained to the Commission that Mr. LeSane has been on a personal leave and therefore he has not been able to answer inquiries from the Commission at this time. He requested that this matter be continued to the February 6, 2002 meeting. Larry Cook, Executive Officer, supported this request.

**Motion by Pate to continue to the next meeting; seconded by Newman. Carried.**

### **Findings**

13. Commissioner Pate: Stewart Kocivar, S.E.I.U. Local 535, on behalf of **Angela Pantoni**, Protective Services Worker II, alleging disability discrimination by the HHSA. (See also No. 14 below.)

### **FINDINGS AND RECOMMENDATIONS:**

At the regular meeting of the Civil Service Commission on November 7, 2001, the Commission appointed Sigrid Pate to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of disability discrimination; that probable cause that a violation of discrimination laws occurred was not established in this matter; and that the Commission determine that an investigation under

the provisions of Civil Service Rule XI is not warranted regarding restrictions placed on Employee by the Agency. It is therefore recommended that: (1) this complaint be denied; and (2) the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law.

**Motion by Pate to approve Findings and Recommendation; seconded by Newman. Carried.**

## **INVESTIGATIONS**

14. Stewart Kocivar, S.E.I.U. Local 535, on behalf of **Angela Pantoni**, Protective Services Worker II, requesting an investigation under Civil Service Rule XI into the personnel practices of the HHSA. Continued from the November 7, 2001 Commission meeting.

RECOMMENDATION: Take action pending outcome of the discrimination complaint. (See also No. 13 above.)

**Motion by Pate to deny investigation; seconded by Newman. Carried.**

## **SELECTION PROCESS**

### **Complaints**

15. **Amanda Greene**, Intermediate Clerk Typist, Sheriff's Department, appealing her non-selection by the Probation and Sheriff's Departments for various classifications as the result of background checks and alleged inappropriate information provided by the Sheriff's Department to prospective employers. Continued from the December 5, 2001 Commission meeting.

RECOMMENDATION: Deny Request.

Appellant stated that she has been attempting to transfer into the Probation Department as an ICT. She has been informed that she has failed the background check and disagrees with the Probation Department's position in this matter.

Commissioner Austin informed Ms. Green that all background checks are not public record and the information obtained is held in confidence. Further, any law enforcement agency has the right to deny employment after checking into an applicant's background.

**Motion by Brummitt to deny request; seconded by Newman. Carried.**

### **Findings**

16. **James A. Grimm**, appeal of removal of his name by the Department of Human Resources from the employment list for Corrections Deputy Sheriff Cadet.

RECOMMENDATION: Ratify item No. 16. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Ratified.**

## **RECONSIDERATION**

17. Richard Pinckard, Esq., on behalf of **James Pitts**, Deputy District Attorney IV, requesting reconsideration of the Commission's December 5, 2001 decision to not conduct an investigation under the provisions of Rule V, section 5.1.7.

RECOMMENDATION: Allow parties to address the Commission regarding Mr. Pitts' request for reconsideration.

**Discussion:**

Rick Pinckard on behalf of James Pitts explained to the Commission that he was unable to attend the December 5, 2001 meeting and had agreed with his client to not send someone in his stead after reviewing the Staff Recommendation for that item. He asked the Commission to exercise its discretion in granting an investigation regarding alleged improper issuance, excluding content. He asked to address Mr. Albers' arguments of December 5, 2001.

Anthony Albers, Sr. Deputy County Counsel, asked whether the Commission had authority to reconsider. Further, he contended that a full history was provided to the Commission on this matter, and a decision to deny request was made at the December 5<sup>th</sup> meeting. Mr. Albers asked the Commission to not reconsider its decision and advised that the Department is ready and has been waiting to provide Employee with a PIP.

Ralph Shadwell, Sr. Deputy County Counsel, responded that the Commission does have authority to reconsider since there has not been a hearing in this matter.

Commissioners discussed this request and by a majority voice informed the President of the Commission that they would not consider a reconsideration in this matter. Without a motion, no further action was taken.

**CLASSIFICATION REVIEW**

18. **Romeo Carrilo Abad**, former Legal Support Assistant II, Department of Child Support Services, requesting a classification review under the provisions of Civil Service Rule XII.

RECOMMENDATION: Deny Request.

Mr. Abad asked to address the Commission regarding this matter. He requested a hearing because he feels that he has been unjustly treated by the Department of Child Support Services. Larry Cook, Executive Officer, reminded the Commission that Mr. Abad had resigned from County employment and no remedy is available at this time should the Commission grant a hearing under Rule XII.

Carlos Arauz, Director of DHR, explained that the Department of Child Support Services was recently created. In creating this new department, all classifications have been thoroughly studied.

**Motion by Dixon to accept staff recommendation; seconded by Brummitt. Carried.**

**OTHER MATTERS**

**Extension of Temporary Appointments**

19. Health and Human Services Agency

A. 2 Volunteer and Public Services Coordinators (Janet Holcomb,



Roseanne Perrone)

- B. 1 Eligibility Supervisor (Cynthia Shubert)
- C. 14 Eligibility Technicians (Ron Simmons, Katherine Kolon, Tracy Carmon-Barber, Karen Osborn, Sherilaine Lane, Gwendelyne Melon, Janaia Bruce, Bertha Walker, Carmen Lara, Elsa Garcia, Matthew Heffernan, Nicole Romano, Danita Washington, Norma Yoro)
- D. 1 Program Specialist II (Douglas Ailshie)
- E. 4 Protective Services Worker II's (Becky Lanier, Sumaya Dinglasan, Omar Lopez, Yadira Tirado)
- F. 1 Public Health Nurse II (Leann Phillips)
- G. 3 Residential Care Worker Trainees (Pamela Morrison, Maria Casas, Genevieve Hebron)
- H. 1 Residential Care Worker I (Lisa Popke)
- I. 1 Social Worker I (Charmin Sabella)

20. Agriculture, Weights & Measures

1 Insect Detection Specialist II (Charles Gross)

RECOMMENDATION: Ratify Item Nos. 19 & 20.

**Item Nos. 19 and 20 Ratified.**

**Compensation**

21. Commissioner Brummitt: Adjustment of compensation for the Commission's Executive Officer to the current control point based on the Board of Supervisors' recent amendment to the Compensation Ordinance.

RECOMMENDATION: Adjust Executive Officer's salary to the current control point.

**Motion by Brummitt to continue to the next meeting; seconded by Newman. Carried.**

22. Public Input.

ADJOURNMENT: 3:45 p.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE FEBRUARY 6, 2002.**